

Dang (Migration) [2019] AATA 1550 (7 March 2019)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANTS:	Mrs Trang Phuong Dang Mr Huy Hoang Nguyen Miss Thi Minh Trang Thai Miss Thi Thuy Trang Nguyen
CASE NUMBER:	1713564
DIBP REFERENCE(S):	CLF2014/143138 OSF2011/034691
MEMBER:	Kate Millar
DATE:	7 March 2019
PLACE OF DECISION:	Adelaide
DECISION:	The Tribunal affirms the decision not to grant the applicants Partner (Migrant) (Class BC) visas.

Statement made on 07 March 2019 at 9:12am

CATCHWORDS

MIGRATION – Partner (Migrant) (Class BC) visa – Subclass 100 – Federal Circuit Court remittal – relationship has ceased – living arrangements not consistent with them having a genuine and continuing relationship – credibility concerns – inconsistent evidence provided – decision under review affirmed

LEGISLATION

Administrative Appeals Tribunal Act 1975
Migration Act 1958, ss 5F, 65, 359A, 375A
Migration Regulations 1994, r 1.15, Schedule 2, cl 100.221, 100.321

CASES

He v MIBP [2017] FCAFC 206

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. Mrs Dang and her children were granted Partner (Provisional) visas on the basis of her relationship with Mr Van Ba Nguyen, who is an Australian citizen. They came to Australia from Vietnam on 9 November 2012.
2. The relationship broke down by 21 December 2012, and Mr Nguyen withdrew his sponsorship of Mrs Dang. On 7 February 2013, Mrs Dang alleged she had been the victim of family violence and sought to meet the criteria for the grant of a Partner (Migrant) (Class BC) visa on the basis that she had been the spouse of Mr Nguyen, the relationship had broken down and she was the victim of family violence.
3. A delegate of the Minister for Immigration refused to grant the visa as the delegate was not satisfied she had suffered family violence, and on referral to an independent expert, the independent expert was also not satisfied she had suffered family violence.
4. Mrs Dang appealed to the Tribunal (differently constituted) and the Tribunal found that Mrs Dang was not the spouse of Mr Nguyen as defined in the *Migration Act 1958* (the Act) and the Migration Regulations 1994 (the Regulations), and therefore that Mrs Dang and her children did not meet the criteria for the grant of the visa.
5. Mrs Dang appealed this decision. The decision was affirmed by the Federal Circuit Court, however on further appeal to the Federal Court the Minister consented to this matter being returned to the Tribunal for reconsideration. This was because the existence of a certificate issued under s.375A of the Act, which acts to prevent the Tribunal disclosing certain information, had not been disclosed to Mrs Dang and at least some of the documents that were the subject of this certificate were relevant or potentially relevant to issues arising on the review. The certificates have now been revoked and the adverse information provided to Mrs Dang.
6. The applicants appeared before the Tribunal on 24 October 2018 and 8 January 2019 to give evidence and present arguments. The Tribunal also received oral evidence from Mr Nguyen Minh Thanh, Miss Thi Minh Trang Thai, Miss Thi Thuy Trang Nguyen and Mr Huy Hoang Nguyen. The applicants were represented in relation to the review by their registered migration agent.
7. For the following reasons, the Tribunal is not satisfied that Mrs Dang was the spouse of Mr Nguyen, and the decision under review is affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

8. This is an application for review of a decision made by a delegate of the Minister for Immigration on 27 November 2014 to refuse to grant the applicants Partner (Migrant) (Class BC) visas under s.65 of the Act.
9. The applicants applied for the visas on 20 December 2011 on the basis of Mrs Dang's relationship with Mr Nguyen. At that time, Class BC contained Subclass 100. The criteria for the grant of this visa are set out in Part 100 of Schedule 2 to the Regulations.
10. To be granted the visa, Mrs Dang must meet the primary criteria for the grant of the visa. Other members of the family unit need satisfy only the secondary criteria.

11. In this case, the visas were refused as the delegate found Mrs Dang did not meet the primary criteria at cl.100.221. This requires her to be the spouse or de facto partner of Mr Nguyen, unless the relationship has ceased and certain circumstances exist. These circumstances include that the applicant, or a member of the family unit, has suffered family violence committed by the sponsor: cl.100.221(4)(b),(c)(i). Mrs Dang states she has suffered family violence committed by Mr Nguyen.
12. The issues in the matter are whether:
 - Mrs Dang was the spouse of Mr Nguyen as defined in the Act and Regulations; and
 - The relationship has broken down;
 - Mrs Dang has made a valid claim of family violence; and
 - Whether she has suffered family violence.
13. Before addressing these issues, it is necessary to address some preliminary matters about the conduct of this matter, adverse information that was put to Mrs Dang, and the credibility of Mrs Dang and her witnesses.
14. **Section 375A certificates**
15. The file included two certificate issued under s.375A on the Department file, one dated 23 December 2014 and one dated 24 December 2014. On the Tribunal requesting a review of these certificates both certificates were revoked.
16. **Conduct of this matter**
17. The conduct of the representative did not assist the Tribunal in this case. The Tribunal requested that the applicant provide a copy of the decision of Magistrate Snopek in *Police v Nguyen*. This decision relates to a contested hearing of an application for an intervention order against Mr Nguyen where the protected person was Mrs Dang, and is clearly relevant to the issues before the Tribunal. It was cited in the previous decision of this Tribunal.
18. The representative declined to provide this decision on the basis that the Tribunal would then be required to obtain it and put adverse information to the applicant under s.359A of the Act. Withholding documents within the possession of the applicant is obstructive and causes delay. This is a busy Tribunal with a large caseload. Delaying the conduct of proceedings by withholding relevant documents in the possession of the applicant, despite the request of the Tribunal to provide these documents, does not assist in the timely progress of matters.
19. Similarly, the applicant provided a list of a number of witnesses that she wished to call. The representative wanted the Tribunal to determine which witnesses it would hear from and advise the applicant accordingly. In the circumstances of this case, where the applicant has had previous hearings of this matter and the issues are well known to the applicant and the representative, the representative is best placed to determine which (if any) witnesses should be called.
20. The representative failed to provide a list of witnesses with the hearing response for the second hearing date or to specify which witnesses would attend to give evidence at the hearing despite undertaking to do so. The representative then sought to rely on a large number of witnesses without having advised they would be called to give evidence despite being asked to provide a witness list for this hearing and undertaking to provide one. The

representative stated the witness list relied on was the one provide prior to the first hearing. This does not assist the Tribunal in the timely and efficient conduct of this matter.

21. Mrs Dang was given considerable leeway to present her case, and a further hearing was scheduled to hear from her witnesses. This matter has consumed a disproportionately large amount of hearing time allocated to the matter when contrasted with other similar matters. The approach of her representative in circumstances when his client was already given considerable leeway to present her case fails to comply with the objects of the *Administrative Appeals Tribunal Act 1975* to provide a mechanism of review that is accessible, fair, economical, informal and quick or the object that the review is proportionate to the importance and complexity of the matter.

22. Material provided to Mrs Dang under s.359A of the Act

23. It is evident from the history of this matter that Mrs Dang sought and was refused an intervention order against Mr Nguyen. The decision of the Magistrate made adverse findings about Mrs Dang and Miss Thai. The Tribunal accessed this decision and put the following findings to Mrs Dang under s.359A of the Act:

- Mrs Dang did not report any assaults to police until after she received a letter from the Department of Immigration;
- Mrs Dang gave evidence that Mr Nguyen did not send her any money;
- Mrs Dang did not tell the truth about how much money she received from Mr Nguyen and that it was more probable than not that he forwarded her \$6,200 and that this affected the Magistrate's view of Mrs Dang as a witness of truth;
- It was more probable than not Mrs Dang never forwarded any money to Mr Nguyen;
- Mrs Dang made untrue assertions about Mr Nguyen to try and cast him in a bad light to try and bolster her allegations of physical and sexual abuse;
- Mr Nguyen gave evidence that Mrs Dang may have brought money with her from Vietnam but he didn't know and never asked her about money. The Magistrate found Mrs Dang deliberately kept information about money she had brought with her from Vietnam from Mr Nguyen as she wanted to keep this for herself outside the relationship for her own purposes;
- Mrs Dang's daughter, Miss Thai, was not truthful in giving evidence about Mrs Dang being hit, and that this affected the Magistrate's view of her credibility as a truthful and accurate witness not only on that topic, but more generally;
- Mr Nguyen gave evidence Mrs Dang never washed his clothes, they did not sleep together, spend time together or go shopping. He gave evidence he cooked his own meals in the barbeque area and slept alone in one of the bedrooms;
- Ms Dang and Mr Nguyen lived separate lives after she came to Australia;
- Mr Nguyen gave evidence that Mrs Dang had the only keys to the house;
- Mrs Dang was an unimpressive witness and her explanation of inconsistencies between her evidence in chief and cross-examination were implausible;

- On the occasions Mrs Dang did cry and become visibly upset the Magistrate was left with the distinct impression she was acting to try and bolster her evidence. On being cross-examined she ceased crying and became argumentative and defiant in her evidence. Her evidence did not have a ring of truth about it;
- Mrs Dang wanted little to do with Mr Nguyen after her arrival in Australia and she “had anything but a normal marital relationship” after her arrival;
- Mrs Dang slapped Mr Nguyen; and
- Mr Nguyen gave evidence that he believed Mrs Dang had used him to enable her and her children to migrate to Australia.

24. Other information received by the Department from Mr Van Ba Nguyen and seven others was put to Mrs Dang under s.359A of the Act. She was provided the names of those who gave statements in support of Mr Nguyen in the notice, however it is not necessary to repeat them in this decision. The information contained in these statements was:

- Mrs Dang married Mr Nguyen to obtain visas for herself and her children;
- Mrs Dang did not allow Mr Nguyen to be intimate with her;
- Mr Nguyen did not have a house key;
- Mrs Dang lived in her own room with her daughters with the door locked;
- Mr Nguyen was abandoned from family life in which a husband and wife share a bed, enjoy a sexual relationship, have meals and share other activities together with the children;
- Mrs Dang requested Mr Nguyen to cause her physical injuries so she could obtain assistance and social benefits;
- Mrs Dang sought help within the Vietnamese community to leave Mr Nguyen within a short period of arriving;
- The behaviour between Mrs Dang and Mr Nguyen was not like a husband and wife;
- Mr Nguyen was often seen sitting in the garage and having meals by himself as well as doing his own washing;
- Mrs Dang has made false allegations about Mr Nguyen;
- The way Mrs Dang acted towards Mr Nguyen was heartless;
- Mrs Dang was observed verbally abusing him with strong language and trying to dare him to hit her so that she could get accommodation without having to pay rent;
- Mrs Dang was seen hitting Mr Nguyen;
- Mrs Dang has a dishonest character;

- Mr Nguyen sought help from others to rent a house and buy domestic items before Mrs Dang arrived in Australia;
- Mrs Dang treated Mr Nguyen badly; and
- Mrs Dang had a grudge against Mr Nguyen and showed a “ready-to-pick-a-quarrel” attitude to him.

25. In response Mrs Dang provided a statutory declaration in which she says that only one name from those who provided statements is familiar to her, and she does not recall meeting others who have provided statements. She says she does not know if those who provided statements were aware of Mr Nguyen’s conduct toward his first wife. It is submitted that as she has a statutory declaration from one witness who says he was asked by Mr Nguyen to lie and provide false evidence she thinks those asked to provide statements may also have been told to lie.

26. Credibility of the applicants and the witness

27. Ms Dang spent a considerable part of the hearing presenting as highly distressed, and with her head in her hands when information was put to her.
28. She was reminded on a number of occasions not to prompt witnesses in their answers. On one occasion, a short period after being reminded not to prompt witnesses, she put her head on the table and attempted to whisper to the witness with her head on the table turned away from the Tribunal. As well as showing a lack of respect for the hearing process, it results in the Tribunal not being satisfied it can rely on the evidence of her witness where she was prompting the witness.
29. On the invitation of her representative, her adult children gave evidence. When her daughter was giving evidence, Ms Dang started wailing and left the hearing room. She could be heard outside of the hearing room, requiring the intervention of her representative.
30. I am acutely aware that a hearing of a matter can be highly distressing, and that the importance of the decision to those affected cannot be underestimated. Where a person has any particular disability or impairment of their ability to give evidence, this must be taken into account. There is nothing before me to show Mrs Dang has any disability or impairment of her ability to give evidence in a measured way.
31. Even when keeping factors in mind that may impair a person’s ability to give evidence, and in light of having spent considerable time hearing this matter, I concur with the assessment of Magistrate Snopek that Ms Dang was an unimpressive witness, and her overt distress was an attempt to bolster her evidence.
32. I do not consider I can rely on evidence given by Ms Dang, or her witnesses where they were prompted by Ms Dang.
33. The remaining applicants, namely Ms Dang’s children, also gave evidence. Miss Thai was described by Magistrate Snopek as not giving truthful evidence and he was not satisfied she was a truthful witness. The remaining applicants have a strong interest in remaining in Australia and supporting their mother, and the Tribunal prefers to rely on their oral evidence only where it is supported by other evidence.

34. Whether the parties were in a spouse relationship

35. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons are in a 'married relationship' if they are married to each other under a marriage that is valid for the purposes of the Act, they have a mutual commitment to a shared life of a married couple to the exclusion of all others, the relationship is genuine and continuing, and they live together, or do not live separately and apart on a permanent basis.
36. In forming an opinion about the matters in s.5F(2)(a)–(d), regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3).

37. Are the parties validly married?

38. The marriage of the parties was registered in Vietnam on 24 May 2011. Mr Nguyen provided a copy of the divorce order for his previous marriage to the Department.
39. On the basis of the marriage registration evidence, the Tribunal is satisfied that Mrs Dang and Mr Nguyen are married to each other under a marriage that is valid for the purposes of this Act.

40. Regulation 1.15A factors

41. In considering whether Mrs Dang was the spouse of Mr Nguyen as set out in s.5F, the Tribunal must consider the factors in r.1.15A of the Regulations. These provisions state that all circumstances of the relationship must be considered including the financial aspects, the nature of the household, the social aspects and the nature of the persons' commitment to each other. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.
42. Mrs Dang provided a statutory declaration dated 18 March 2013 about the nature of the relationship and the family abuse she alleges she suffered. Mrs Dang said she met Mr Nguyen after her brother asked a friend to find someone in Australia for her to make friends with and with whom she could live. The friend and gave her Mr Nguyen's telephone number, after which she and Mr Nguyen talked over the phone. As they got along well, Mr Nguyen decided visit her in Vietnam at the end of 2009. They met in person at the airport when he arrived and went to her home town. Mr Nguyen rented a hotel room and she spent time with him at the hotel and going out together. She said during this time they fell in love and they married in 2010. She said after they were married Mr Nguyen stayed in Vietnam and their life was blissful. She said at that time they loved each other so she decided to come to Australia. She arrived in November 2012. Within six weeks Mr Nguyen had left the home and withdrawn his sponsorship, after which Mrs Dang claimed she had suffered family violence.

43. Financial aspects of the relationship

44. The financial aspects of the relationship, include:
- (i) Any joint ownership of real estate or other major assets; and
 - (ii) Any joint liabilities; and
 - (iii) The extent of any pooling of financial resources, especially in relation to major financial commitments; and

- (iv) Whether one person in the relationship owes any legal obligation in respect of the other; and
- (v) The basis of any sharing of day to day household expenses.
45. There is no joint ownership of real estate or other assets, or any joint liabilities. There are no legal obligations owed in respect of the other. This leaves the consideration of pooling of financial resources and the basis of sharing of any day-to-day household expenses.
46. At the hearing on 14 October 2015, Mrs Dang said they had not made major purchases together.
47. In Mrs Dang's statutory declaration dated 18 March 2013, she states:
- Prior to her arrival in Australia, she sent Mr Nguyen \$4,000 in two instalments of \$2,000. She intended this money to be spent on accommodation, furniture and household goods.
 - On arriving in Australia, she discovered Mr Nguyen had lost this money gambling.
 - She had brought with her an additional \$5,000. Of this amount, she spent about \$1,000 on household goods and the rest was taken by the sponsor.
 - Although the lease is in the sponsor's name, Mrs Dang has always been responsible for rent payments.
48. The Tribunal does not have any documentary evidence supporting Mrs Dang's assertion that she transferred money to the sponsor prior to her arrival in Australia. The evidence in her statutory declaration is not consistent with her oral evidence where she said she had a rental property available to her and her children upon arrival. This was confirmed by Mrs Dang's witness, Mr Thanh.
49. It was also found that this was an inconsistency in her evidence before Magistrate Snopek, who said:
50. I did not understand the complaint of Ms Dang regarding renting a house, and regard this as an embellishment by her which she was forced to retract as it was not true. This was just one of many untrue assertions made by Ms Dang in her evidence and I have concluded were made to try and cast the defendant in a bad light and to try and bolster Ms Dang's allegations of physical and sexual abuse.
51. Mrs Dang gave oral evidence that Mr Nguyen had sent money to her which she gave to his brothers for their own use. At the original hearing she said Mr Nguyen sent money from his brother through Mrs Dang to the sponsor's sister who was building a house. Mrs Dang's account of money sent to her in Vietnam by Mr Nguyen was not consistent between the account given in the original hearing of this matter and the account at this hearing.
52. This evidence is again different to the evidence that Mrs Dang gave in front of Magistrate Snopek. It was put to Mrs Dang under s.359AA of the Act that Magistrate Snopek states that she "emphatically denied that the defendant [the sponsor] ever sent her money" and that after being shown money transfer transactions made by the sponsor to her, she continued to deny that she received the whole amount. The Magistrate found it more probable than not that Mr Nguyen forwarded her \$6,200.
53. Mrs Dang claims she misunderstood the question in relation to Mr Nguyen transferring her money. She states that:

54. ... it is true that Mr Nguyen transferred money to me but this money was not intended for me to keep and so my answer was intended to confirm that Mr Nguyen never sent any money that was for me to keep.
55. Mrs Dang's inconsistent responses to the same question make it difficult to determine what has transpired with transfers of money from Mr Nguyen to her and therefore any pooling of financial resources or sharing of day-to-day household expenses. I find it more likely that Mr Nguyen did send Mrs Dang money, and that she asserts it was not for her use to support her argument that he did not give her any money and this was a part of the family violence she suffered.
56. Mrs Dang states she brought \$5,000 with her to Australia from the sale of her house in Vietnam, and when she arrived Mr Nguyen consistently asked her for money to pay his debts. She said she did not tell him she had this money because she was feeding the children. She then said their money was together and if he wanted to spend the money he could spend it.
57. On being asked why she did not tell Mr Nguyen she had this money, she said because that money she brought was hers, but then said she thought of it as being theirs as a couple, and then that he did not ask about it the first couple of days she was in Australia. She said when he did ask she told him she had brought a few thousand dollars but not much. She said that was because if she told him how much money she had he would use the money.
58. Setting aside for the moment the differences in these answers, the lack of communication about the money Mrs Dang brought to Australia does not show that they pooled financial resources or that they shared household expenses for items such as food for the household.
59. Mrs Dang said when they were in Vietnam she would pay for most things when they went out, and Mr Nguyen would pay, but not very often. She said she sent him the money to purchase a ticket to come to Vietnam, but did not have any documentary evidence to show she paid for this ticket. Mrs Dang said they used money from the sale of her house for the wedding and Mr Nguyen gave her two weeks' worth of pension payments to help with the wedding costs. On being asked if she had sold her house before the wedding, she then said she had not sold her house then but had borrowed money for the wedding.
60. On being asked if there was a pooling of financial resources, Mrs Dang said Mr Nguyen did not have any money and she did not have a major sum of money.
61. On being asked about the basis of sharing household expenses, she said when they went shopping either one would pay for the groceries, in both Vietnam and in Australia. She said she paid all the bills in Vietnam and in Australia, with the exception of one week's rent which Mr Nguyen borrowed from a friend because he had no money to pay the rent.
62. In January 2019, Mrs Dang provided a Commonwealth Bank account confirmation as at 5 December 2018 with the account holders named as Ba Van Nguyen and Phuong Trang Dang. The account was opened on 29 November 2012. There are no transactions listed, and in the statutory declaration that accompanied the statement, Mrs Dang acknowledged there were no transactions on this account, but she viewed the joint account as a sign Mr Nguyen considered the relationship to be genuine. Given Mr Nguyen withdrew his sponsorship of Mrs Dang within three weeks of opening this account, I do not consider opening this account supports an assertion that it was a sign of his commitment to her.
63. I find there was a limited pooling of financial resources, and that the finances of Mrs Dang and Mr Nguyen were kept separate both at the time of the visa application and on Mrs Dang

arriving in Australia, as shown by Mrs Dang not disclosing her financial position to Mr Nguyen.

64. I find there was limited sharing of household expenses in Vietnam. There is no documentary evidence regarding who paid the rent or any other household bills in Australia. I do not accept Mrs Dang's evidence as to the sharing of expenses, or her payment of the rent in the absence of supporting documentary evidence. As a result I find there was little if any sharing of household expenses on Mrs Dang's arrival in Australia.

65. *The nature of the household*

66. The nature of the household includes:
- (i) Any joint responsibility for the care and support of children; and
 - (ii) The living arrangements of the persons; and
 - (iii) Any sharing of the responsibility for housework.
67. Mrs Dang has three children who are now 30, 26 and 21 years of age. Mrs Dang said that when Mr Nguyen was in Vietnam he would ask what her children's favourite food was and together they would shop and cook for them. She said when they decided to come to Australia, Mr Nguyen said her children would attend school, but within a few days of arriving he asked the younger boy to start working on a farm. Due to the age of Mrs Dang's children, less is required in terms of care and support. The oral evidence of Mrs Dang and her children was that Mr Nguyen "really loved them" and that they spent time together, going out for meals or Mr Nguyen cooked for them. At best, on Mrs Dang's evidence, Mr Nguyen made promises about the children studying which were not fulfilled and they spent time together over meals. I do not consider Mrs Dang and Mr Nguyen had joint responsibility for the care and support of children.
68. From the time they registered their marriage on 24 May 2011, Mr Nguyen has registered his residence at Mrs Dang's house in Vietnam from 12 October 2010 to 7 July 2011 and 4 October 2011 to 18 March 2012. This is shown by an application by Mr Nguyen for certification that he stayed at Mrs Dang's address. Mrs Dang said she had to register Mr Nguyen at the house and this was recorded in her household registration book. She said this was later burned by Mr Nguyen, but then also that it was still in Vietnam but she could not get a copy because she left it with the people who bought her house.
69. While the Tribunal remained unclear about the weight it could place on this document, on balance it is accepted that Mr Nguyen was registered as living with Mrs Dang during lengthy periods while in Vietnam, and that this is a significant piece of evidence in support of the relationship.
70. Mrs Dang's children gave varying evidence about when Mr Nguyen lived with them in Vietnam, however generally stated they could not recall when he was living with them. While there has been a considerable period of time since he was in Vietnam, it was not altogether convincing they could not remember by reference to their own school terms or years. However, giving the parties the benefit of the doubt in light of the registration of Mr Nguyen at Mrs Dang's address, it is accepted that he lived at the same address as Mrs Dang in those periods in Vietnam. They also shared an address when Mrs Dang arrived in Australia, however in light of its view of Mrs Dang's evidence and the findings of Magistrate Snopek the Tribunal prefers the evidence that she did not share a room with Mr Nguyen on her arrival and they lived separately while at the same address.
71. Mrs Dang gave evidence at the hearing that in Vietnam they shared shopping and cooking duties and that Mr Nguyen would pick up blankets and pillowcases, wash, and mop the floor.

In the previous hearing before this Tribunal, Mrs Dang said Mr Nguyen did not help with housework because he was busy with visitors and would only put up mosquito nets and make coffee in the morning.

72. On the differences between her oral evidence at the two hearings being put to Mrs Dang, she said that for the first few weeks he would have visitors but then after that he would not have so many visitors. She said she did not mention his housework at the previous hearing because she was not asked for details.
73. A statutory declaration from Mrs Dang's niece states that when she saw Mrs Dang doing the cooking Mr Nguyen would take charge of the cleaning, and this was notable as it is uncommon for Vietnamese men to help in the house. She states Mr Nguyen would go to the market to buy food for the household, and would also buy food for the niece's family and her grandmother. Another niece provided a statement in similar terms. Mrs Dang's sister provided a statement that Mr Nguyen would help out around the house.
74. Mrs Dang's children each gave evidence that when he was in Vietnam they were happy. Her daughter gave evidence that Mr Nguyen cooked for her mother when she was unwell and bought them gifts.
75. In regard to sharing the responsibility for housework various witness statements were provided on behalf of Mr Nguyen. In one statement, it is stated that:
 76. she [the applicant] treated him [the sponsor] very badly. [She] noticed that Mr Ba had to do most things by himself, from cooking for himself, washing his clothes ... [The applicant] has always born a grudge against him and showed a ready-to-pick-a-quarrel attitude to him. [The sponsor] always returned her with a good attitude and has silently put up with her heartless behaviours (sic).
77. A witness statement provided that the signatories went with Mr Nguyen to pick up Mrs Dang when she arrived. It goes on to say:
 78. on numerous occasions, I saw Mr Ba ... sitting in the garage and having his meal by himself. Apart from doing his own washing, he had to take care of all other things by himself.
79. Allegations are made both in statutory declarations and statements in the previous Tribunal file and in the hearing of this matter that Mr Nguyen approached other people and asked them to give false evidence in Court about the relationship, and in particular that Mrs Dang had attacked him. Given the Magistrate heard from the witnesses and formed a view as to the veracity of witnesses having heard directly from them, I see no reason to go behind these findings.
80. It is also submitted that the people who provided statements that Mrs Dang did not assist with housework and was not kind to Mr Nguyen were not known to Mrs Dang and she denies they were at the house.
81. I find that the living arrangements were that Mr Nguyen stayed with Mrs Dang while in Vietnam and that they shared a house, but lived separately, when she came to Australia. I am not satisfied they shared the responsibility for housework.

82. Social aspects of the relationship

83. The social aspects of the relationship, include:
 - (i) Whether the persons represent themselves to other people as being in a de facto relationship with each other; and

- (ii) The opinion of the persons' friends and acquaintances about the nature of the relationship; and
- (iii) Any basis on which the persons plan and undertake joint social activities.

84. In her statutory declaration Mrs Dang said when the sponsor visited her in Vietnam they went out on dates and to sightsee. Mr Nguyen's friends came to the house on some occasions, and came when she arrived to welcome her. At the previous Tribunal hearing Mrs Dang said she and Mr Nguyen socialised occasionally in Vietnam as she was busy working and caring for her children.
85. Mrs Dang has provided six statements from friends and family. These statements refer to Mrs Dang and Mr Nguyen 'lov[ing] each other like a young couple' and being 'happy and cosy', and 'living happily'. Annotated photographs were provided from birthday celebrations at restaurants and on the day of the applicant's mother's funeral. Photographs were provided of the applicant and sponsor singing together.
86. I consider that, while in Vietnam, they jointly attended some social events, and that the relationship was recognised by friends when Mrs Dang arrived in Australia. Mr Nguyen met members of Mrs Dang's family while in Vietnam and spent time with them.
87. Another statement said that the person intended to organise a welcome party for Mrs Dang, however this did not happen because Mr Nguyen told her about the situation between him and the applicant, including that since Mrs Dang's arrival in Australia, she did not allow him to sleep with her. Another witness statement is from a friend of Mr Nguyen who states they saw Mrs Dang verbally abusing Mr Nguyen and daring him to hit her. On one occasion, it is stated they witnessed Mrs Dang hit Mr Nguyen in the face.
88. Mr Thanh gave evidence and said he was a friend of Mr Nguyen, however he hadn't seen him for two to three years. He said he first met Mrs Dang when she arrived in Australia as he drove Mr Nguyen to the airport to meet her. He said he spent time with Mr Nguyen in the first three to four weeks Mrs Dang was in Australia and they seemed a very happy couple. As Mrs Dang was prompting him in his evidence, I do not consider I can rely on his evidence.
89. While there is some evidence of them socialising with others and undertaking joint social activities in Vietnam, this evidence is from Mrs Dang's family members, and I do not place great weight on this evidence. I am satisfied they represented themselves as a married couple in Vietnam and on Mrs Dang's arrival in Australia as this is implicitly acknowledged in the third party statements from Mrs Dang and Mr Nguyen provided to the Tribunal.

90. Nature of commitment

91. The nature of the persons' commitment to each other, includes:
- (i) The duration of the relationship; and
 - (ii) The length of time during which the persons have lived together; and
 - (iii) The degree of companionship and emotional support that the persons draw from each other; and
 - (iv) Whether the persons see the relationship as a long term one.
92. In terms of the duration of the relationship, Mr Nguyen provided a statutory declaration stating they first met in person in April 2009 and he stayed in Vietnam for a period of time before returning to Australia. I consider this is approximately the time the relationship started, and to the time of the application this was over two and a half years.

93. From the time they registered their marriage on 24 May 2011, Mr Nguyen registered his residence at Mrs Dang's house in Vietnam from 12 October 2010 to 7 July 2011 and 4 October 2011 to 18 March 2012. This is shown by an application by Mr Nguyen for certification that he stayed at Mrs Dang's address. Mrs Dang said she had to register that Mr Nguyen was at the house and that this was recorded in her household registration book. She said this was later burned by Mr Nguyen, but then also that it was still in Vietnam but she could not get a copy because she left it with the people who bought her house.
94. Mrs Dang said when Mr Nguyen came to Vietnam he would generally stay with her, but would also visit relatives for two or three months at a time. Mrs Dang said she could not remember how many times Mr Nguyen visited Vietnam, she could only remember the times they first met and when they married. She could not remember if he stayed for four or six months when they first met. I accept that Mr Nguyen stayed with Mrs Dang part of the time he was in Vietnam and they lived together for over a year from the date the marriage was registered.
95. From the time Mrs Dang and her children arrived in Australia until Mr Nguyen withdrew his sponsorship, they lived together for approximately six weeks.
96. Mrs Dang's assertions as to the nature of their relationship while they were in Vietnam until they arrived in Australia were in general terms such as the relationship was "blissful" or that they were very much in love and had found happiness. In light of my view of her credibility, I am not satisfied this was the case, and her lack of specificity does not lend support to a contention they provided each other with companionship and emotional support.
97. Mrs Dang gave evidence on several occasions that Mr Nguyen had a problem with alcohol, yet she did not observe him drinking more than socially in Vietnam. If, as she says, she spent considerable time with him in Vietnam, I find it difficult to accept Mr Nguyen was either capable of hiding his alleged alcoholism from her or that in the short period of time that the couple was living apart, he developed a drinking problem.
98. While Mrs Dang and Mr Nguyen lived together for a little over a year I am not satisfied Mrs Dang had a commitment to a long term relationship with Mr Nguyen or provided companionship and emotional support.
99. **CONCLUSION**
100. Mrs Dang and Mr Nguyen did not merge their financial affairs in a way that supports them being in a spouse relationship. While I am satisfied Mr Nguyen lived with Mrs Dang for a little under a year in Vietnam and for a short period in Australia, I am not satisfied their living arrangements were at the time of the application consistent with them having a genuine and continuing relationship. They did not share housework. There is little independent evidence of the nature of the household and the social aspects of the relationship, with inconsistent evidence about the nature of the household. There is little independent evidence of them socialising in Vietnam, and any socialising had ceased by the time Mrs Dang arrived in Australia. I accept they represented themselves to others as a married couple. Mrs Dang and Mr Nguyen have been married to each other since 2010, however in this time Mr Nguyen stayed with Mrs Dang for approximately one year of that time. I do not accept they provided each other with companionship and emotional support or that Mrs Dang saw the relationship as long term.
101. Most significantly, I do not accept that Mrs Dang had a genuine commitment to a shared life to the exclusion of all others or that the relationship was genuine and continuing.

102. Having considered all of the factors in r.1.15A, I am not satisfied there was a mutual commitment by Mrs Dang to a shared life with Mr Nguyen to the exclusion of all others, or that the relationship was genuine and continuing. It follows that I am not satisfied that Mrs Dang was the spouse of Mr Nguyen as defined in the s.5F of the Act. As she does not meet the requirement to have been the spouse of Mr Nguyen before the relationship ceased, the question of whether she suffered family violence does not arise.
103. As I am not satisfied Mrs Dang was the spouse of Mr Nguyen as defined by the Act and the Regulations, she does not meet cl.100.211, and the decision under review is affirmed.
104. As Mrs Dang does not meet the primary criterial for the grant of the visa, the remaining visa applicants cannot meet cl.100.321 and the decision in relation to the remaining applicants is affirmed.
105. **DECISION**
106. The Tribunal affirms the decision not to grant the applicants Partner (Migrant) (Class BC) visas.

Kate Millar
Member